APPEAL CASES
UNDER THE
FOOD & DRUGS ACTS
1875 & 1879
AND
MARGARINE ACT
1887

B. SCOTT ELDER

3/- NET.

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FOOD AND DRUGS ACTS, 1875 AND 1879, AND THE MARGARINE ACT, 1887.

APPEAL CASES

UNDER THE

Sale of Food & Drugs Acts, 1875 & 1879,

AND THE

Margarine Act, 1887.

BY

B. SCOTT ELDER,

Chief Inspector of Food and Drugs and Weights and Measures for the County of Durham.

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PREFACE.

THE rapidly increasing number of Appeal Cases under the Food and Drugs Acts and Margarine Act, and the ever increasing interest and importance which the subject is demanding must be evident to everybody, and the Author knowing from experience the great need there is for a convenient and reliable book of reference to the numerous Appeal Cases under these Acts, begs to offer the following pages.

It is extremely undesirable, and indeed unsafe, to attempt to interpret any of the decisions, or to express any opinion thereon, as the decisions themselves are very often, apparently, contradictory to one another, and in direct conflict with the ordinary reading of the statutes.

This little volume, then, is simply a collection (as complete as possible), of hard

and dry facts, conveniently arranged and indexed, and it is hoped it will be of service to the magistracy, the legal profession, inspectors, and the many others who are interested in the administration of these Acts.

That I have been able to make this little book as comprehensive as it is, is no doubt largely due to the courtesy of the aftermentioned authorities, whose kindness in granting me permission to use extracts I hereby gratefully acknowledge: The proprietors of *The Law Reports*, *The Justice of the Peace*, *The Law Journal Reports*, *The Law Times Reports*, *The Weekly Reporter*, and *The Times Law Reports*.

B. SCOTT ELDER.

January 10th, 1900.

ANALYTICAL TABLE OF CASES.

A.—TAKING SAMPLES.

B.—NOTIFICATION OF MIXTURE.

C.—NOTICE THAT ARTICLE IS BOUGHT FOR ANALYSIS.

D.—QUESTIONS AS TO VENDOR'S LIABILITY.

(1.) Selling to the Prejudice of the Purchaser.

(2.) Samples Procured by Servant or Deputy of Inspector.

(3.) No Knowledge of Adulteration.

(4.) Warranty from Wholesale Dealer.

E.—STANDARD OF STRENGTH.

F.—LEGAL PROCEEDINGS.

(1.) Persons who may not take Proceedings.

(2.) Before the Hearing.

(3.) At the Hearing.

G.—ANALYST'S CERTIFICATE.

H.—MISCELLANEOUS.

MARGARINE.

INDEX OF CASES.

APPEAL CASES

UNDER THE

Sale of Food and Drugs Acts, 1875 and 1879, and the Margarine Act, 1887.

A.

TAKING SAMPLES.

ROUCH v. HALL (1880).

6 Q. B. D. 17 ; 44 J. P. 748 ; 45 J. P. 220 ; 50 L. J. M. C. 6 ; 44 L. T. 183 ; 29 W. R. 304.

Sample taken at a railway station.

THE respondent supplied milk, under contract, to a London dealer. The appellant, a food, etc., inspector, being at Euston whilst milk sent in pursuance of this contract was being unloaded from the train by a railway porter, required the porter to give him a sample of the milk. Upon this being done, he told the porter that he intended to have the milk analysed, and having divided the sample into three parts, handed one of them to the porter. The magistrate dismissed the summons on the

ground that s. 14 of the Sale of Food and Drugs Act, 1875, had not been complied with,—the porter not being the agent of the seller within the meaning of the section. The inspector appealed.

Held, not necessary where a sample of milk in course of delivery is procured for analysis under s. 3 of the Sale of Food and Drugs Act Amendment Act, 1879, for the officer procuring such sample to notify to the seller, or his agent, his intention of having the sample analysed, or to deliver to the seller, or his agent, a portion of the sample in accordance with the provisions of s. 14 of the Sale of Food and Drugs Act, 1875. (*See now Sale of Food and Drugs Act*, 1899, *s.* 10.)

CHAPPELL v. EMSON (1884).

48 J. P. 200.

Offer to divide sample.

D. purchased from the appellant a pint of milk, and, after the purchase was completed, told the vendor that he intended to have the milk analysed, and offered to divide it with the vendor, which offer was refused. The milk was found to be adulterated and the vendor was convicted.

Held, on appeal, that the provisions of s. 14 of the Sale of Food and Drugs Act, 1875,

had been sufficiently complied with, and that it was unnecessary for the purchaser to "offer to divide the milk into three parts" in so many words. (*See now Sale of Food and Drugs Act*, 1899, s. 13.)

FILSHIE v. EVINGTON (1892).

2 Q. B. 200 ; 56 J. P. 312 ; 66 L. T. 199 ; 40 W. R. 380 ; 8 T. L. R. 306.

Place of delivery of milk, carriage being paid by purchaser.

By the Sale of Food and Drugs Act Amendment Act, 1879, s. 3, certain officers therein named, "may procure at the place of delivery any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk"; and power is given to submit such sample for analysis, and take proceedings as provided by s. 13 of the Sale of Food and Drugs Act, 1875. The appellant, who lived at C., contracted with a dairy company for the sale to them of the milk from his dairy, to be delivered at London, or at such other station as the purchasers should, from time to time, appoint, the carriage of the milk from C. to be paid by the purchasers. The purchasers appointed H. as a station for the delivery of milk under contract. The

appellant consigned milk from C. to the purchasers at H.; immediately on its arrival at the latter station, and before possession was taken of it by the purchasers, a sample was taken by the respondent, which, upon analysis, was found to be adulterated by the addition of water.

Held, that, notwithstanding the provision for payment of the carriage by the purchasers, H. was the place of delivery of the milk to the purchasers within the meaning of the section; and the appellant was, therefore, rightly convicted of an offence under the Acts.

HEWSON v. GAMBLE (1892).

56 J. P. 534 ; 8 T. L. R. 301.

Vendor seized the article sold on hearing it was to be analysed: Question of larceny.

G., an inspector, entered H.'s shop, and bought a pound of coffee, which was delivered by H.'s son in a tin and wrapper. G. then announced that it was for analysis and offered to divide it. H. was then called from another part of the premises, and on being told of the matter snatched the package from G., said it was not sold as pure coffee, and showed the label on the package. The appellant refused to give back the coffee, but offered to return the

respondent's money. The justices convicted H. of larceny of the package.

Held, there being no evidence of felonious intent, the justices were wrong in convicting of larceny.

PAYNE v. HACK (1893).

58 J. P. 165.

Sale of spirits out of a specified bottle : Production of Inspector's authority.

P., a publican, on request, supplied H. with rum out of a bottle on a shelf in the bar. After tasting it, H. requested to have half-a-pint of rum. P. was about to supply H. out of another vessel, but H. demanded the supply out of the same bottle, saying he was an inspector, and it was for analysis. H. refused, and was summoned for such refusal under s. 17 of the Sale of Food and Drugs Act, 1875. He was convicted.

Held (1) that as P. had not demanded to see H.'s authority, H. was not bound to produce it; (2) that P. was bound to supply the sample out of the same bottle as that from which he first supplied H.

B.

NOTIFICATION OF MIXTURE.

SANDYS v. SMALL (1878).

3 Q. B. D. 449 ; 47 L. J. M. C 115 ; 39 L. T. 118 ; 26 W. R. 814.

Notice posted that articles sold are mixed.

An inspector under the Sale of Food and Drugs Act, 1875, directed his assistant to purchase from the respondent, a publican, half a pint of whisky. The assistant did so, at the same time informing the respondent that it was intended to have the whisky analysed. Upon analysis it was found to be mixed with 30 per cent. of water, and the respondent was summoned; but the magistrate dismissed the case upon the ground that the respondent complied with the provisions of the Act by placing in a prominent position in his bar and in several other parts of his premises a notice stating, "All spirits sold here are mixed."

Held, that the magistrates were right. Where the seller of an article brings to the purchaser's knowledge the fact that the article sold to him

is not of the nature, substance, or quality of the article he demands, the sale is not "to the prejudice of the purchaser," within the meaning of s. 6 of 38 & 39 Vict. c. 63, and consequently no offence is committed under that section. The 8th section of the Act points out a mode of giving notice to the purchaser that is made by the Statute sufficient; but it is not intended by that section that whenever the mode therein specified is not adopted there shall necessarily be an offence against s. 6.

GAGE v. ELSEY (1883).

10 Q. B. D. 518; 47 J. P. 391; 52 L. J. M. C. 44; 48 L. T. 226; 31 W. R. 500.

Notice posted that articles sold are mixed.

By s. 6 of 42 & 43 Vict. c. 30, it is provided that "in determining whether an offence has been committed under 38 & 39 Vict. c. 63, s. 6, by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than . . . 35 degrees under proof for gin." The appellant sold to the respondent gin more than 35 degrees under proof, but, at the time of sale, brought to his knowledge a printed notice hung up in the room, to the

effect that all spirits were sold as "diluted spirits; no alcoholic strength guaranteed."

Held, that although the appellant had not a good defence under 42 & 43 Vict. c. 30, s. 6, he was not by that section deprived of any defence which he would have had under 38 & 39 Vict. c. 63, and that the sale not having been to the prejudice of the purchaser, no offence had been committed under 38 & 39 Vict. c. 63, s. 6.

MORRIS v. JOHNSON (1890).

54 J. P. 612; 6 T. L. R. 171.

Notice that all spirits sold are diluted, posted in two rooms, but not in the room where the sample was sold.

T. went into J.'s public-house, and without going into the bar or kitchen went into a club room and asked for whisky, and that supplied was 37 degrees under proof. A notice that "all spirits sold are diluted" was posted in the bar and kitchen, but not in the club room, and nothing was said to T. on delivery.

Held, the justices ought to have inquired before deciding whether T. knew that the practice was at J.'s house to sell only diluted spirits, in which case no conviction was proper.

HIGGINS v. HALL (1886).

51 J. P. 293.

Selling a mixture is not an offence if a mixture is declared.

A. went into H.'s shop and asked for half a pound of coffee. H. said she did not keep it, whereon A., pointing to certain tins labelled "coffee and chicory," H. said she sold that as a mixture, and A. asked for half a pound of it, which H. sold. The mixture contained about 30 per cent. of coffee. H. was charged under s. 6 of the Sale of Food and Drugs Act, 1875, with selling coffee not of the nature, etc., of coffee.

Held, the justices were wrong in convicting H. of selling coffee, for that she sold only a mixture, as she was entitled to do, and in doing which she committed no offence within the above section.

JONES v. JONES (1894).

58 J. P. 132 (note only).

Selling a mixture: Sufficiency of label on packet of cocoa.

J. was summoned for selling cocoa, which was not cocoa as demanded, but a mixture of starch, sugar,

and cocoa. The justices convicted J., who appealed, and at quarter sessions the justices were equally divided, but stated a case. The cocoa sold was in a packet on which was a label which stated that the cocoa was mixed, but no attention was called to this by the seller, and the packet was wrapped in opaque paper and delivered to the purchaser. On analysis, the contents were found to be 30 per cent. cocoa and 70 per cent. starch and sugar. J. contended that there was a sufficient notice that the article was mixed, and there was no evidence of fraud.

Held, that the notice of a mixture was sufficient, and, there being no evidence of fraud, the conviction was wrong.

ATTFIELD v. TYLER (1893).

57 J. P. 357.

Selling a mixture: Notice of mixture given in very small type.

A. was charged with selling cocoa not of the nature, substance, and quality demanded. T. asked for a quarter of a pound of cocoa, when various cocoas were submitted, and T. said he would have Epps's cocoa, for which he paid $3\frac{1}{2}d.$ When sold, A. said: "I sell this cocoa as I receive it from Epps." The analyst found it adulterated with 40

per cent. of starch and sugar. There was a wrapper round the tin stating that the cocoa was mixed. The evidence was that West India arrowroot and sugar were mixed to modify the effect of the cocoa butter, and prevent the heavier particles settling, the cocoa not being fit for consumption without the arrowroot. A. contended that he was within the 8th section, as the ingredients mixed were not injurious or used fraudulently.

The justices held that the label did not distinctly or legibly state the cocoa was mixed, the type being so small that it required a magnifying glass, and convicted A.

Held, the justices were wrong. (*See now Sale of Food and Drugs Act*, 1899, *s.* 12.)

JONES v. DAVIES (1893).

57 J. P. 808 ; 9 T. L. R., 492.

Selling a mixture: Sufficiency of label on tin of condensed milk.

The appellant purchased at the respondent's shop a tin of condensed milk for $4\frac{1}{2}d$. At the time of purchase the attention of the appellant was not called to any label on the tin, but he saw on it a

label with "Condensed Milk, Swiss Dairy Brand" in large letters, and in smaller type on the back of the tin, "Swiss Dairy Brand. This tin contains skimmed milk prepared with the finest sugar. It will be found cheaper than ordinary fresh milk and useful for all household purposes. The Condensed Milk Company of Ireland (Limited) Limerick."

It was proved that 93 per cent. of the butter fat had been abstracted from the milk, and that the material was injuriously affected thereby.

The questions for the court were:—

(1.) Whether disclosure and label, such as were proved, would, without specially calling the purchaser's attention thereto, be a sufficient disclosure under s. 9 of the Sale of Food and Drugs Act, 1875.

(2.) Whether, under the circumstances, the label contained a sufficient disclosure of the alterations proved.

Held, there was a sufficient disclosure under s. 9 of the Act, that the milk had been skimmed before condensation. (*See now Sale of Food and Drugs Act*, 1899, *s.* 11.)

PLATT v. TYLER and WRIGHT v. TYLER (1894).
58 J. P. 71.

Selling a mixture: Sufficiency of label on tin of condensed milk.

These cases were similar. In the first case P. was charged under ss. 8 and 9 of the Sale of Food and Drugs Act, 1875, with selling condensed milk from which 80 per cent. of fat had been abstracted without making disclosure of the alteration.

The purchaser went into the shop and asked for a tin of condensed milk. He was told that there were several sorts of condensed milk at different prices, and that some of them were skimmed milk. He decided to have a tin at $3\frac{1}{2}d$. The tin was handed to him and he duly declared that he had bought it for analysis, and divided it into parts. The owner of the shop then came forward and told him the article supplied was condensed skimmed milk, and drew his attention to the label on the back of the tin which contained (among others) the following words: "Calf brand. This tin contains skimmed milk with nothing added but the finest sugar."

The label on the front of the tin described the article as "Condensed Milk (calf brand)." The justices found as a fact that the label was not, either

by its position or conspicuousness, and especially having regard to the fact that the article was described in the main part of the label as "condensed milk," and not as "condensed skimmed milk," a label distinctly printed delivered with the article.

The justices convicted.

Held, that the cases were concluded by the authority of *Jones* v. *Davies*, and that the justices were wrong in holding that there was not a sufficient compliance with the Act. (*See now Sale of Food and Drugs Act*, 1899, *s.* 11.)

OTTER v. EDGLEY (1893).

57 J. P. 457.

Selling a mixture : Quantity of coffee in mixture immaterial when a mixture is notified.

O. sold French coffee, the label stating that it was mixed with chicory, and the purchaser was also told the same. The analysis showed there was 60 per cent. chicory and 40 per cent. of coffee. The justices convicted O., holding that, as the proportion of chicory was not stated, it must have been added fraudulently to increase the bulk.

Held, the justices were wrong, and that there was no evidence to support a conviction.

PETCHEY v. TAYLOR (1898).

62 J. P. 360.

Condensed milk—Separated milk—Skimmed milk—Sale to the prejudice of the purchaser—Sufficient disclosure of adulteration.

On a demand for purchase of condensed milk, a label affixed round a tin of condensed milk, having printed thereon (*inter alia*), in red letters, the words "This tin contains skimmed milk," whereas the tin, in fact, contained separated milk from which 97 per cent. of the original fat had been abstracted, while it was proved as a fact that no more than 63 per cent. of the original fat could be abstracted by the process of skimming, does not give proper and sufficient notice of the alteration in the milk. (*See now Sale of Food and Drugs Act*, 1899, *s.* 11.)

LIDDIARD v. REECE (1878).

44 J. P. 233.

Selling a mixture: Notice that the article sold is a mixture does not protect seller when the mixture is fraudulently made.

After supplying a purchaser who had asked for half-a-pound of "coffee" and before the purchase was

removed from the counter, the vendor called his attention to a printed label on the package, stating "This is sold as a mixture of chicory and coffee." The purchaser thereupon proceeded to act in pursuance of s. 14 of the 38 & 39 Vict. c. 63, and proceedings being instituted, the magistrates convicted the vendor of an offence under s. 6 of the Act: 1st, because the purchaser having asked for "coffee" was supplied with something not of the nature, quality, or substance of the article demanded; 2nd, because the mixture of chicory appeared to be intended fraudulently to increase the bulk, weight or measure of the article, the price charged being that usually charged for pure coffee; 3rd, because the purchaser's attention had not been called to the label until after the purchase was completed. From this decision the vendor appealed upon the ground that he was protected by s. 8 of the Act, and cited *Sandys* v. *Small.*

The conviction was affirmed upon the ground that, the magistrates having found that the coffee was fraudulently mixed with intent to increase the bulk, the mere fact of the notification on the label did not protect the seller.

HORDER v. MEDDINGS (1880).

44 J. P. 234.

Selling a mixture—Large proportion of Chicory: Question of fraud.

An inspector under the Sale of Food and Drugs Act, 1875, sent to the respondent's shop for a quarter-of-a-pound of coffee. The respondent's servant, who was in charge of the shop, placed a paper on the scale and weighed out the quantity required from a canister labelled "Symington's Coffee." Whilst the article was being weighed the girl stated the price to be 1*s.* 4*d.* a pound, and the purchaser then stated that he bought the article for analysis. The coffee was thereupon wrapped up in the paper, which had stamped upon it "This is sold as a mixture of chicory and coffee." The purchaser was told that he could have coffee berries ground for him, but at a higher price. He declined. He saw the label before paying for the article, and knew before the sale was complete that it was a mixture of chicory and coffee. On analysis the article was found to contain 85 per cent. of chicory and 15 per cent. of coffee.

The magistrate dismissed the case.

Held, that the magistrate was bound, notwithstanding the label, to find whether the chicory

was used fraudulently to increase the bulk, and that, if so, he ought to convict.

Case remitted to the magistrate.

MORRIS v. ASKEW (1893).

57 J. P. 724.

Selling a mixture—Notice posted that articles sold are mixed: Sufficiency of notice.

A., a publican, was charged under 38 & 39 Vict. c. 63, s. 6, with selling rum, which was not of the nature, etc., of the article, being adulterated with 19 per cent. of added water. On the purchaser asking for rum A. said he had two qualities, one at 1*s.*, another at 1*s.* 2*d.* per half-pint, and the quality at 1*s.* was supplied. The analysis showed that the rum was 38 degrees under proof, and contained 19 per cent. of water beyond the limit specified in 42 & 43 Vict. c. 30, s. 6. There was this notice stuck up in the house: "All spirits sold here are diluted in accordance with the new excise regulations."

The justices held the notice was sufficient and dismissed the summons.

Held, the justices were wrong, as the mere notice itself was not a protection, and that the justices should have determined whether the purchaser was prejudiced.

SPIERS AND POND v. BENNETT (1896).

2 Q. B. 65.

Sale of article of food in altered state: Disclosure of alteration.

By s. 9 of the Food and Drugs Act, 1875, "No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds."

The appellants, a firm of refreshment contractors, entered into a contract with a dairy company for the supply to them of milk; the contract containing a warranty by the company as to the purity of the milk to be supplied. Milk was delivered under the contract at a refreshment room of the appellants; it was handed in a can to one of their servants, who poured a portion of it into a churn, which was placed on the counter for the purpose of the milk being sold to customers; it was so poured that a less proportion of cream was in the milk that went into the churn than in the milk which remained in the can. The respondent bought a glass of milk at the counter; the milk was drawn from the churn, and on analysis shewed a deficiency of 17 per cent.

of cream. Upon the glass in which the milk was served were engraved the words "Not guaranteed as new or pure milk or with all its cream, see notices"; and upon the refreshment counter was a printed notice to the effect that all milk sold by the appellants was purchased by them under a warranty of its purity and genuine quality; that they took all possible precautions to ensure its supply to their customers in proper condition, but were unable to guarantee it as new, pure, or with all its cream, and did not, therefore, sell it as such.

Held, that, assuming that the facts shewed an abstraction from the milk, there had been a sufficient disclosure by the appellants of the alteration to satisfy the requirements of the section. In order to constitute the offence of selling an article in its altered state without disclosure of the alteration, it is unnecessary to shew a *mens rea* on the part of the seller.

PALMER v. TYLER (1897).

61 J. P. 389.

Notice of dilution.

In selling spirits diluted with water only, the seller is not liable to a penalty under s. 6 of the Sale of Food and Drugs Act, 1875, if he brings to the

knowledge of the purchaser at the time of the sale, the fact that the spirits are diluted so as to be reduced more than the number of degrees under proof specified in s. 9 of the Sale of Food and Drugs Act Amendment Act, 1879, because if that fact be brought to the knowledge of the purchaser, the sale cannot be said to be to the prejudice of the purchaser.

And it is not necessary that the seller should give notice of the admixture of the water with the spirits by a label in accordance with the provisions of s. 8 of the Sale of Food and Drugs Act, 1875.

C.

NOTICE THAT ARTICLE IS BOUGHT FOR ANALYSIS.

BARNES v. CHIPP (1878).

L. R. 3 Ex. D. 176 ; 47 L. J. M. C. 85 ; 38 L. T. 570 ; 26 W. R. 635.

Purchasing samples : Notification by purchaser to seller that article is bought for analysis.

ACTING under the direction of the inspector of weights and measures, a police constable bought gin from the barmaid of an inn with the intention of submitting it to analysis. He then told her that he was a police constable, and that he had bought the gin for the purpose of analysis, but did not add "by the public analyst." The inspector afterwards had the gin analysed by the public analyst, and obtained his certificate that it was diluted. Thereupon the innkeeper was prosecuted under ss. 20, 21 of the Sale of Food and Drugs Act, 1875, and was summarily convicted of an offence against s. 6.

Held, that the notification required by s. 14, that the article is to be "analysed by the public

analyst," was a condition precedent to a prosecution under the Act, and that the conviction must be quashed. (See *Wheeker* v. *Webb*, *post*, p. 24.)

PARSONS v. THE BIRMINGHAM DAIRY CO. (1882).

9 Q. B. D. 172 ; 46 J. P. 727 ; 51 L. J. M. C. 111 ; 30 W. R. 748.

Purchasing samples : Notification by purchaser to seller that article is bought for analysis.

The respondents had a contract with the appellant for the supply of milk, and they caused some of the milk supplied to them by him to be analysed, but did not give him notice of their intention to do so, and did not otherwise comply with the provisions of s. 14 of the Act of 1875.

Held, that the provisions of s. 14 of the Sale of Food and Drugs Act, 1875, apply to the case of a private purchaser under s. 12 as well as to that of a public officer under s. 13; and, therefore, where a private purchaser does not duly notify to the seller of an adulterated article his intention to have the article analysed by a public analyst, he is debarred from proceeding against seller under the Act.

WHEEKER v. WEBB (1887).

51 J. P. 661.

Purchasing samples: Notification by purchaser to seller that article is bought for analysis.

W., the seller of spirits, was informed after the purchase that the article was to be examined by the "county analyst," and W. knew that the county analyst was the public analyst of the place.

Held, the notice to W. was sufficient, though the words "public analyst" were not expressly used by the purchaser.

SOMERSET v. MILLER (1890).

54 J. P. 614.

Purchasing samples: Notice from purchaser to seller that article was bought for analysis.

S., the inspector, standing outside, sent B., a constable, into M.'s inn to buy gin, and after B. came out, both went two minutes later inside and told M. that the gin was bought for analysis and divided it. The gin was found 37 degrees under proof.

Held, that the justices were wrong in holding that the object of the purchase was not notified "forthwith," pursuant to s. 14 of the Sale of Food and Drugs Act, 1875.

SMART AND SON v. WATTS (1895).

1 Q. B. 219.

Notification to seller a condition precedent to prosecution, notwithstanding contemporaneous admission of offence by seller.

The notification required by s. 14 of the Sale of Food and Drugs Act, 1875, to be given by an inspector after the completion of a purchase, of his intention to have the article purchased analysed by the public analyst, is a condition precedent to a prosecution under the Act, and cannot be dispensed with, although there is a contemporaneous admission by the seller of an offence against the Act. An analysis of the article purchased is also, in similar circumstances, a condition precedent to a prosecution.

D.

QUESTIONS AS TO VENDOR'S LIABILITY.

(1.) Selling to the Prejudice of the Purchaser.

SANDYS v. MARKHAM (1877).

41 J. P. 52.

Vendor's liability: Is the sale to the prejudice of the purchaser?

Where adulterated mustard had been purchased by an inspector for the purpose of being analysed, and the point was raised that the inspector was not prejudiced as a purchaser under s. 6 of the Food and Drugs Act, 1875, Lush, J., said *obiter*: "Surely if the purchaser did not get pure mustard, as he was entitled to, prejudice must be presumed."

[The case was remitted to the justices for further information, but whether it came again before the court, the reports do not show.

The point as to prejudice, referred to in the above dictum of Lush, J., was settled by the Sale of Food and Drugs Act Amendment Act, 1879, s. 2.]

HOYLE v. HITCHMAN (1879).

4 Q. B. D. 233 ; 48 L. J. M. C. 97 ; 40 L. T. 252 ; 27 W. R. 487.

Vendor's liability : Is the order to the prejudice of the purchaser?

An inspector who purchases a sample of food or drugs under s. 13 of the Sale of Food and Drugs Act, 1875, for the purpose of having it analysed by a public analyst, is to be regarded as a purchaser who has suffered "prejudice" under s. 6 of the same Act, if the sample should prove not to be of the nature or quality of the article which he asked for.

The word "purchaser" in s. 6, includes a person authorised to purchase for the purpose of testing the article.

The "offence" contemplated by the Act consists in fraudulently selling an inferior article to that demanded and paid for.

If a purchaser asks for a certain article, and gets an article which by reason of some admixture of a foreign article is not of the nature or quality of the article he asks for, he is necessarily prejudiced. (*See Sale of Food and Drugs Act Amendment Act*, 1879, *s.* 2.)

COLLETT v. WALKER (1895).

59 J. P. 600.

Prejudice of the purchaser—label on bulk, but not on piece sold.

The agent of an inspector of food and drugs walked into a shop and asked for cheese, pointing to an article labelled "Valleyfield finest oleine cheese," the words "finest oleine" being in smaller type than the others. He did not see the word "oleine," and would not have known what it meant if he had seen it. The inspector might have suspected an admixture of foreign fat, but his attention was not called to the label till after the purchase was made and the purpose of it declared. The substance consisted of skim milk and 70 per cent. of foreign fat.

Held, that the vendor was rightly convicted under s. 6 of the Act, of selling to the prejudice of the purchaser.

(2.) SAMPLES PROCURED BY INSPECTOR'S SERVANT OR DEPUTY.

HORDER v. SCOTT (1880).

5 Q. B. D. 552; 44 J. P. 520; 49 L. J. M. C. 78; 42 L. T. 660; 28 W. R. 918.

Purchase of samples by deputy.

The appellant's assistant bought "best coffee" at the respondent's shop. On analysis, it was found to

contain a large proportion of chicory. The respondent was summoned, but the justices dismissed the case on the ground (amongst others) that the proceedings having been instituted by the appellant in his official capacity, he, and not his assistant, should have purchased the article and dealt with it.

Held, the decision was wrong. An inspector appointed under the Sale of Food and Drugs Act, 1875, may employ a deputy to purchase articles for the purpose of analysis, and may properly institute proceedings against the seller of such articles if the result of analysis discloses an offence against the Act.

It is not necessary that the officer taking such proceedings should have acted personally in the purchase of the sample, and the person purchasing the sample on his behalf need not himself deliver the sample to the analyst, but may hand it to another for the purpose of such delivery.

STACE v. SMITH (1880).
45 J. P. 141.

Purchase of sample by deputy: Information laid by principal.

S., the sanitary inspector, went with D. to a shop where butter was sold, and sent into the shop D.,

who bought a pound of butter for a shilling. D. came out and gave it to S., who within two minutes went inside and gave notice to the shopkeeper that he had bought it for analysis, and he then and there divided it into parts, etc. S. laid the information for selling butter not of the nature, etc., of butter.

Held, the purchaser of the article was S., and not D., and that S. properly gave the notice and laid the information.

GARFORTH v. ESAM (1892).

56 J. P. 521 ; 8 T. L. R. 243.

Purchase of sample by deputy: Question of prejudice to purchaser.

A food inspector sent his servant into a public-house to purchase a bottle of gin. When the servant had been in the house a minute, and had paid for the gin, the inspector entered. He had given the servant the money to buy the gin.

Held, the inspector was the purchaser, and the justices were wrong in dismissing the information on the ground that he was not the purchaser and was not prejudiced.

(3.) No Knowledge of Adulteration.

BETTS v. ARMSTEAD (1888).

20 Q. B. D. 771 ; 52 J. P. 471 ; 57 L. J. M. C. 100 ; 58 L. T. 811 ; 36 W. R. 720.

Knowledge of adulteration not necessary to sustain conviction under s. 6.

The respondent sold, to the prejudice of the purchaser, a loaf .containing a quantity of alum, and he was prosecuted therefor under s. 6 of the Sale of Food and Drugs Act, 1875. He stated in defence that he did not know the bread contained alum, and that it must have been in the flour which he had bought.

Held, that an offence within that section was committed, although the seller did not know that the article sold was not of the nature, substance and quality demanded.

PAIN v. BOUGHTWOOD (1890).

24 Q. B. D. 353 ; 54 J. P. 469 ; 59 L. J. M. C. 45 ; 62 L. T. 284 ; 38 W. R. 428 ; 16 Cox C. C. 747 ; 6 T. L. R. 167.

Knowledge of adulteration not necessary to sustain conviction under s. 9.

By s. 9 of the Sale of Food and Drugs Act, 1875, "No person shall, with the intent that the same may

be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds."

The appellant purchased a pint of milk at the respondent's shop. It was found that of the sample sent to the analyst 28 per cent. of the original fat had been abstracted. No evidence was given that the person selling the milk knew of the alteration, and the respondent and his shop manager denied knowledge of it.

Held, that a person selling the altered article could be convicted under s. 9, although at the time he sold it he did not know of the alteration.

DYKE v. GOWER (1891).

[1892] 1 Q. B. 220 ; 56 J. P. 168 ; 61 L. J. M. C. 70 ; 65 L. T. 760 ; 17 Cox C. C. 421 ; 8 T. L. R. 117.

Selling an article "in its altered state"—Ignorance of alteration no defence.

By s. 9 of the Sale of Food and Drugs Act, 1875, "No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect

injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds."

Held, that the words "so altered" refer to a physical alteration of the article, irrespective of the intent with which the alteration is made.

The respondent, a retail milk seller poured into a pail eight barn gallons of unskimmed milk, which she sold therefrom in small quantities to her customers, dipping it out of the pail from time to time with a measure. The sale of the contents of the pail extended over a space of between four and five hours, during the whole of which time, owing to the neglect of the respondent to keep the milk stirred, the cream was continually rising to the surface. When not more than two quarts of milk remained in the pail, the appellant purchased of the respondent a pint of milk, which was served to him from the pail, and which, upon analysis, showed a deficiency of 33 per cent. of fatty matter. The respondent did not disclose the deficiency to the appellant. The deficiency was entirely due to the manner in which the earlier customers had been served.

Held, that the respondent, in so selling the milk to the appellant without disclosing its condition, was guilty of an offence against the above section.

MORRIS v. CORBETT (1892).

56 J. P. 649.

Knowledge of adulteration not necessary to sustain conviction under s. 9.

The servant of C., a dairyman, being short in his supply of milk, bought two gallons from another dairyman and mixed it with his own, and sold the same to customers. C., being summoned under s. 9 of the Sale of Food and Drugs Act, 1875, it was held, that though neither C. nor C.'s servant knew or had reason to suspect the milk was adulterated, this was no defence.

BROWN v. FOOT (1892).

56 J. P. 581; 61 L. J. M. C. 110; 66 L. T. 649; 8 T. L. R. 268.

Vendor's liability—Article sold by servant.

The servant of a milk salesman, employed by his master to sell milk, adulterated it with water. The master was convicted as the seller of the adulterated

milk under s. 6 of the Sale of Food and Drugs Act, 1875, and fined the full penalty of 20*l.*

Held, that the conviction was right, whether the master did or did not connive at the offence.

[The case was remitted to the magistrate with an expression of the court's opinion that evidence of connivance was not necessary to prove the offence, but that it was admissible if he thought it desirable with a view to mitigating the penalty.]

PARKER v. ADLER (1898).
1 Q. B. 20.

Liability of innocent vendor for milk adulterated in transit.

The respondent, a milk salesman, contracted to supply pure milk to an association. The milk was to be delivered to the association at a railway terminus in London. The respondent delivered the milk in a pure and unadulterated condition to the servants of the railway company at his local station, and the milk was adulterated without his knowledge or consent during the transit from the local station to the terminus.

Held, that the respondent was liable to be convicted under s. 6 of the Sale of Food and Drugs Act, 1875.

(4.) Warranty from Wholesale Dealer.

ROOK v. HOPLEY (1878).

3 Ex. D. 209 ; 47 L. J. M. C. 118 ; 38 L. T. 649 ; 26 W. R. 663.

Warranty.

An information laid against the respondent for having sold adulterated lard had been dismissed. The analyst had certified that the lard in question contained 15 per cent. of water, but the respondent rested his defence upon s. 25 of the Sale of Food and Drugs Act, 1875, inasmuch as he had bought the lard from a person who, it was stated, had given therewith "a written warranty," as required by that section. The appellant, however, contended that this was not the warranty contemplated by the section, but mere description, being in the following terms : "Bought by Mr. Hopley, etc., four tins of lard, No. 1, 28 lbs. each, at—." On the other hand, it was argued that the respondent came within the exception in s. 6 of the Act, as the water to which the analyst referred was not injurious to health, but simply necessary to the manufacture of the article.

Held, that the invoice did not constitute a warranty within s. 25 so as to discharge the defendant.

HARRIS v. MAY (1893).

12 Q. B. D. 97; 48 J. P. 261; 53 L. J. M. C. 39; 32 W. R. 595.

Warranty.

By s. 25 of the Sale of Food and Drugs Act, 1875, "if the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect," he shall, under certain other specified conditions, be entitled to be discharged from the prosecution.

Upon the hearing of an information against the appellant for having, contrary to the provisions of the Act, sold on April 12th, 1883, certain milk to the respondent, which was not of the nature, substance, and quality demanded by him, as it contained a percentage of water, the appellant proved that he had purchased the article in question under a written contract made with F. on March 24th, 1883, whereby F. agreed to sell to the appellant 86 gallons of good and pure milk (each and every day) for six months, "the said milk to be delivered twice daily."

Held, that this contract did not constitute a written warranty within the meaning of s. 25 in

respect of the specific article sold by the appellant to the respondent on April 12th; and, therefore, that the appellant was not entitled to be discharged from the prosecution. (*See Laidlaw* v. *Willson*, *post*, p. 40.)

FARMERS AND CLEVELAND DAIRY COMPANY v. STEVENSON (1890).

55 J. P. 407; 60 L. J. M. C. 70; 63 L. T. 776; 17 Cox C. C. 201.

Warranty.

Upon the hearing of an information against the appellants for having sold certain milk to the respondent, which was not of the nature, substance, and quality demanded by him, viz., 20 per cent. of its original fat having been abstracted, the appellants proved that they purchased the milk under a contract by which the Higham Company agreed to supply them daily with a certain quantity of "genuine good new milk of the best quality with all its cream on," and by which the vendor warranted each supply of milk to be pure, genuine and unadulterated, and that attached to the churn which contained the milk of which the milk in question was part, was a label bearing the words "warranted genuine new milk with all its cream on."

Held, that the contract and the label together constituted a written warranty within the meaning

of s. 25 of the Sale of Food and Drugs Act, 1875.

HOTCHIN v. HINDMARCH (1891).

2 Q. B. 181 ; 55 J. P. 775 ; 60 L. J. M. C. 146 ; 65 L. T. 148 ; 39 W. R. 607 ; 7 T. L. R. 513.

Warranty.

H., who was a servant of the F. Dairies Company, and acting as such, sold to the respondent milk which contained 12 per cent. of added water.

Held, that H. was properly convicted as a seller of the milk under s. 6 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63).

The milk in question was consigned to the F. Dairies Company by railway in cans bearing labels which stated that the contents were "warranted genuine new milk with all its cream on, from R. T.," and there was a written agreement between the F. Dairies Company and R. T., whereby he contracted to supply them for six months with milk warranted pure and with all its cream on. H. did not test the milk on receiving it, although he had an instrument for the purpose, and frequently tested milk when so received by him.

Held, that s. 25 of the Sale of Food and Drugs Act, 1875, was not applicable, and that even if it

would have entitled H. to be discharged from the proceedings, he had not established that at the time when he sold the milk he had no reason to believe that its quality was otherwise than as demanded of him by the respondent.

ELDER v. SMITHSON (1893).

57 J. P. 809.

Warranty.

S. sold lard to E. which was adulterated with 8 per cent. of beef fat, and was charged under 38 & 39 Vict. c. 63, s. 6. The defence was that it was bought from the manufacturer in skins, which were stamped with the words "warranted pure."

Held, no sufficient warranty to satisfy s. 25 of the statute, and no defence.

LAIDLAW v. WILLSON (1894).

1 Q. B. 74; 63 L. J. M. C. 35; 42 W. R. 78.

Warranty.

A firm of lard manufacturers on December 17th, 1892, entered into a written contract for the sale of lard to the respondent in the following terms: "We have this day sold to you three tons Kilvert's Pure Lard, for delivery to the end of January, 1893." On

December 23rd a parcel of lard was consigned to the respondent by the said manufacturers, and delivered to him under the said contract. The respondent subsequently sold a portion of such parcel to the appellant as and for lard. Upon analysis it turned out to be adulterated. The respondent had sold it *bonâ fide* and in the same state as it was in when he bought it. On an information against the respondent for having, contrary to the provisions of the Sale of Food and Drugs Act, 1875, sold the lard not being of the nature, substance, and quality demanded by the appellant:

Held, that the contract of December 17th contained a sufficient written warranty of purity in respect of the specific parcel consigned on December 23rd to satisfy s. 25 of the Act, and that the respondent was entitled to be discharged from the prosecution.

JONES v. BERTRAM (1894).

58 J. P. 116, 478.

Warranty.

B., a refreshment contractor, obtained a warranty from a milk contractor to supply milk from which the cream was not extracted, and without water or other substance added when delivered. C. purchased,

at 7.30 p.m., some milk which had been so delivered at 10.30 a.m., and on analysis, it was found to contain 36 per cent. of added water. B. was summoned under 38 & 39 Vict. c. 63, s. 6, and contended that he was protected by s. 25, for he sold the milk under a warranty, and in the same state, etc., as he received it. The magistrate found that B. had sold the milk under a warranty, and had no reason to believe that it was not pure, and dismissed the summons.

Held, that B. was not protected by s. 25, because the magistrate had not found that the milk was in the same state as when B. received it, and the case was remitted to him to find on that point.

LINDSAY v. ROOK (1894).

10 T. L. R. 643.

Warranty.

H. purchased from the appellant a pint of malt vinegar which was supplied from a cask in appellant's shop, having on it a red label, bearing, in print, the words "Vinegar, warranted unadulterated — Grimble & Co. (Limited), Cumberland Market, London." It was proved that the vinegar so sold by the appellant was invoiced to her as

"Grimble's Vinegar," and that the cask supplied contained on its end the red-printed label referred to; that the vinegar was pure malt vinegar, but that it contained 30 per cent. of added water, such addition not being injurious to health, but being made for the production and preparation of the said vinegar as an article of commerce in order that the same might be sold at a low price; and that it was sold as she had purchased it. It was contended for the appellant on the above facts that she was protected by s. 25 of the Sale of Food and Drugs Act, 1875, the label and invoice amounting to a written warranty within the meaning of the Act. The magistrates convicted the appellant.

Held, that there was a warranty within the meaning of the section. Conviction quashed.

IORNS v. VAN TROMP (1895).

59 J. P. 246.

Sale of article not of the nature and substance and quality demanded--Written warranty—Invoice and label.

The written warranty required under s. 25 of the Sale of Food and Drugs Act, 1875, must form part of the contract under which the article was purchased, and neither the invoice nor a label attached

to the article itself when received, but not appearing to be the vendor's label, can be looked at as containing the warranty, though they may serve to identify the article as purchased under the particular contract.

Laidlaw v. *Willson*, [1894] 1 Q. B. 77 ; 58 J. P. 58, distinguished.

HAWKINS v. WILLIAMS (1895).

59 J. P. 533.

Written warranty—Invoice.

Upon the sale of butter to the respondent, the invoice, dated the day of sale, contained the words, "guaranteed pure," followed by the initials of the vendor, whose full name was upon the invoice. Some of this butter was subsequently sold to the appellant by a servant of the respondent in the respondent's shop, and on analysis, was found to contain an admixture of 17 per cent. of foreign fat. The respondent's manager was summoned for an offence under s. 6 of the Sale of Food and Drugs Act, 1875. At the hearing the name of the defendant was, by his consent, substituted for that of his manager, but against the consent of the prosecutor. The respondent relied on the invoice as a written warranty within s. 25 of the same Act, and the

justices dismissed the information under that section.

Held, on a case stated, that there was evidence upon which the justices could find a written warranty, and that the substitution of the respondent for the original defendant with his consent did not necessarily invalidate the proceedings.

COOK v. WHITE (1896).

1 Q. B. 284.

Limit of time for taking proceedings—False warranty.

A summons under s. 27 of the Sale of Food and Drugs Act, 1875, against the original vendor of a perishable article of food for giving a false warranty in writing in respect of it to a purchaser, need not be served within twenty-eight days from the purchase of the food for test purposes from that purchaser.

DERBYSHIRE v. HOULISTON (1897).

1 Q. B. 772.

Warranty—Scienter—Giving false warranty to purchaser.

The appellant was charged under s. 27 of the Sale of Food and Drugs Act, 1875, with giving a false warranty in writing to a purchaser in respect of an article of food sold by the appellant. When the appellant sold the article he did not know, and had no reason to believe, that the warranty was false.

Held, that he was not liable to be convicted. (*See now the Sale of Food and Drugs Act*, 1899, *s.* 20 (6).)

E.

STANDARD OF STRENGTH.

(*a.*) SPIRITS: BEFORE 1879. (*b.*) DRUGS: BRITISH PHARMACOPŒIA.

PASHLER v. STEVENITT (1876).

35 L. T. (N.S.) 862.

Strength of spirits.

The appellant had sold as "gin" a liquid which, according to the certificate of the public analyst, was composed of 26 per cent. of alcohol, 70 per cent. of water, and 4 per cent. of sugar. The analyst at the hearing stated that it was 44 per cent. under proof, and that he should describe it as "gin whose alcoholic strength is exceedingly low." Evidence was adduced to show that gin was sold by retailers at strength varying from proof to 20 per cent. under proof.

Held, upon a case stated, that the facts justified the justices' finding that this liquid was not of the quality of gin, but that the excess of water was a fraudulent increase of the measure of the

article within the enacting part of s. 6 of the Sale of Food and Drugs Act, 1875. (*See now the Sale of Food and Drugs Act Amendment Act*, 1879, *s.* 6.)

WEBB v. KNIGHT (1877).

2 Q. B. D. 530 ; 46 L. J. M. C. 264 ; 36 L. T. 791 ; 26 W. R. 14.

Strength of spirits.

The appellant had been convicted before a magistrate of selling gin which was not of the nature, substance, or quality of the article demanded by the purchaser. It appeared that the respondent, who was an inspector under the Sale of Food and Drugs Act, 1875, had gone to the hotel kept by the appellant, and there asked for a pint of gin. He was told that he could have it either at 2*s.* or 1*s.* 4*d.* the pint, and he took that at 1*s.* 4*d.* The analyst found that the gin thus purchased was 43 per cent. under proof, but that it was not so adulterated as to be injurious to health.

Held, that whether the mixture in question was what a purchaser buying gin, without any further description, would reasonably expect to receive, was a question of fact for the magistrate ;

and that there was sufficient evidence to justify the conviction. (*See now the Sale of Food and Drugs Act Amendment Act*, 1879, *s.* 6.)

WHITE v. BYWATER (1887).

19 Q. B. D. 582 ; 51 J. P. 821 ; 36 W. R. 280.

Standard of quality of drugs—British Pharmacopœia.

Upon a complaint under s. 6 of the Food and Drugs Act, 1875, for selling tincture of opium which was not "of the nature, substance, or quality" of the article demanded by the purchaser, it appeared that the drug which was sold as "tincture of opium" by the defendant was deficient in opium to the extent of one-third and in alcohol to the extent of nearly one-half as compared with the standard prescribed by the British Pharmacopœia.

Held, that the defendant was liable to be convicted, although the purchaser had not specifically asked for tincture of opium "prepared according to the recipe in the British Pharmacopœia."

F.

LEGAL PROCEEDINGS.

(1.) Persons who may not take Proceedings.

HARRIS v. WILLIAMS (1889).

6 T. L. R. 47.

Proceedings by consignees or purchasers.

H., a milk contractor, agreed to supply W. with from twenty-five to thirty gallons of milk daily, at a price varying with the time of the year. One morning P. attended at W.'s premises, at W.'s request, and took a sample from milk which H.'s servant was in course of delivering. The sample was divided by P. into three parts, and one was handed to H.'s servant, who was told that the sample was taken for analysis by the public analyst. The sample was sent to the analyst through the vestry clerk, who also transmitted the analyst's certificate to W. The vestry had no cognizance of the proceeding, nor was the vestry clerk acting in his official capacity in sending the sample to the analyst, nor did he send it with any view to a prosecution. P. was not an

officer of the vestry. A complaint was laid by W. against H., under s. 6 of the Sale of Food and Drugs Act, 1875, and H. was convicted.

Held, the conviction was wrong.

Where milk is delivered wholesale under a contract, the purchaser or consignee cannot institute proceedings under the Sale of Food and Drugs Act, 1875. Proceedings in such cases can only be taken according to s. 3 of the Sale of Food and Drugs Act, 1879, by the officers mentioned in the section, under the direction and at the cost of the local authority.

(2.) Before the Hearing.

DIXON v. WELLS (1890).

25 Q. B. D. 249 ; 54 J. P. 725 ; 59 L. J. M. C. 116 ; 62 L. T. 812 ; 38 W. R. 606 ; 6 T. L. R. 322.

Summons issued by a justice who did not hear the complaint.

A complaint having been made to two justices of a borough against the appellant for an offence under the Sale of Food and Drugs Act, a summons was signed and issued by another justice, who had not heard the complaint, and was served on the appellant. The appellant thereupon appeared before the stipendiary magistrate of the borough, but objected

that the summons was invalid, and the magistrate had no jurisdiction to hear the case. The magistrate being of opinion that the defect, if any, in the summons, was cured by the appearance of the appellant, heard the case and convicted him.

Held, that the summons, having been signed and issued by a justice who had not heard the complaint, was invalid; that the defect was not cured by the appearance of the appellant, as he appeared under protest; that the provisions of s. 10 of the Sale of Food and Drugs Act Amendment Act, 1879, were imperative, and not merely directory, and that, as no summons had been duly served in accordance with them, the magistrate had no jurisdiction, and the conviction was wrong.

FECITT v. WALSH (1891).

2 Q. B. 304 ; 55 J. P. 726 ; 60 L. J. M. C. 143 ; 65 L. T. 82 ; 39 W. R. 525 ; 17 Cox C. C. 322.

Separate informations for separate samples—Provisions in contract as to deficiency of cream supplied in milk.

The appellant contracted to supply milk to a workhouse at a certain price; by the contract, the milk was to contain a certain percentage of cream;

it was to be tested on each delivery and a reduction was to be made in the price in respect of any deficiency in cream. While the daily supply, contained in five cans, was being delivered at the workhouse, the respondent, acting under s. 3 of the Sale Food and Drugs Act Amendment Act, 1879, procured a sample from each of the five cans; there being a large deficiency of cream in two of the samples, the respondent subsequently laid two separate informations against the appellant in respect of those two samples under s. 9 of the Sale of Food and Drugs Act, 1875. The justices convicted the appellant in a separate penalty upon each information.

Held, that the procuring of each sample was a separate transaction; that the appellant had committed a separate offence as to each can in respect of which an information was laid; that the separate informations were, therefore, properly laid, and the convictions were right.

Held, *further*, that the provisions in the contract as to deficiency of cream were immaterial in the determination of the question whether the appellant had committed an offence under the Act.

R. v. WAKEFIELD (1890).

54 J. P. 148 (note only).

Particulars in summons.

This was a rule calling on justices to state a case. They had convicted a person of selling milk not of the nature, substance, and quality demanded. The milk had been analysed and water found to be mixed, but the summons did not give any particulars as to how the milk was adulterated, but merely stated that the thing demanded was new milk. The defendant did not ask for an adjournment, but contended that the statement of particulars of adulteration was a condition precedent, and that the justices acted without jurisdiction.

Held, that it was for the justices to decide if there were sufficient particulars. Rule discharged.

BARNES v. RIDER (1892).

56 J. P. 709 ; 57 J. P. 473 ; 62 L. J. M. C. 25.

Particulars in summons.

B. was summoned for selling on June 30th a pint of milk not of the nature, substance, and quality demanded by the purchaser. No particulars of the offence were stated in the summons in pursuance of 42 & 43 Vict. c. 30, s. 10, nor was it stated in what manner the milk had been adulterated. This

objection was taken by B. It appeared, however, that before the summons was issued, the appellant was informed that the milk was said to have been adulterated with water. The magistrate convicted B.

Held, the magistrate was wrong.

[The decision in *Barnes* v. *Rider* was disapproved in *Neal* v. *Devenish*.]

NEAL v. DEVENISH (1894).

1 Q. B. 544 ; 58 J. P. 246 ; 63 L. J. M. C. 78 ; 70 L. T. 628.

Particulars in summons.

The appellant was charged under s. 6 of the Sale of Food and Drugs Act, 1875, with unlawfully selling to the prejudice of the purchaser, milk "which was adulterated, and was not of the nature, substance, and quality demanded by the purchaser." The appellant appeared, but objected that particulars of the offence were not stated in the summons in compliance with s. 10 of the Act of 1879. The justices held that the appellant was not misled by the form of summons, and that the statement therein was sufficient, and they convicted the appellant.

Held, that the conviction was right.

Although s. 10 of the Sale of Food and Drugs Act Amendment Act, 1879, provided that in all

prosecutions under the principal Act particulars of the offence of which the seller is accused shall be stated on the summons, the omission of such particulars from the summons does not deprive the justices of jurisdiction, but merely entitles the defendant to an adjournment of the hearing in the event of the justices being satisfied that he is prejudiced by such omission.

(3.) At the Hearing.

HALE v. COLE (1891).

55 J. P. 376.

Proof of authority of food inspector.

The appellant, a police sergeant, bought gin at the respondent's public-house, and duly gave notice that it was to be analysed by the public analyst. On analysis it was found to be 44·9 degrees under proof. Proceedings being taken, it was stated at the hearing that the appellent acted under the direction of his superintendent, but it did not appear that he acted under the direction of the local authority. On the latter ground the justices dismissed the case.

Held, they were wrong.

Where a constable prosecutes for adulteration

of food it is not necessary to prove as a condition precedent that he was directed by the local authority appointing him such constable to prosecute.

HIETT v. WARD (1894).

58 J. P. 132, 461 ; 70 L. T. 374.

Variance between offence charged and offence proved.

H., a farmer, was charged with unlawfully selling milk containing 10 per cent. of added water. A carrier was about to deliver a churn of milk sent by H. to a dairyman for sale, and a pint of milk was bought from him, and it had water added as above. H. contended that he did not sell, as the carrier was not his agent, and that the purchaser, not having duly separated the purchased article, the summons was bad. The justices convicted H. under 42 & 43 Vict. c. 30, s. 3, the article being then in course of delivery, holding that any variance between the charge and the offence proved was cured by 11 & 12 Vict. c. 43, s. 1.

Held, the justices were right.

G.

ANALYST'S CERTIFICATE.

BAKEWELL v. DAVIS (1893).

[1894] 1 Q. B. 296 ; 58 J. P. 228 ; 63 L. J. M. C. 93 ; 69 L. T. 832.

Analyst's certificate : Contents of.

B. was charged with sending by railway milk with 22 per cent. of fat less than natural. The analyst's certificate stated that fact, and added, by way of observation, "the abstraction of fat is a fraud." The justices convicted B.

Held, that the certificate need not set out the constituent parts of the sample analysed where the case is not one of adulteration ; it need only state the "result" of the analysis.

The "observations" which, in the form of certificate given in the schedule to the Act, follow after the result of the analysis are only to be made where the case is one of adulteration ; but the addition, in cases where adulteration is not charged, of "observations" amounting only

to an expression of opinion on the part of the analyst and not to a finding of fact, although unauthorised and improper, will not necessarily vitiate the certificate.

NEWBY v. SIMS (1894).

1 Q. B. 478 ; 58 J. P. 263 ; 70 L. T. 105 ; 10 T. L. R. 206.

Particulars in analyst's certificate.

By s. 6 of the Sale of Food and Drugs Act, 1875, any person selling to the prejudice of the purchaser any article of food not of the nature, substance, and quality of the article demanded, is liable to a penalty, and by s. 21 the certificate of the analyst is made evidence, and by s. 6 of the Amendment Act of 1879, it is made a good defence to a charge of selling rum adulterated only with water to prove that the admixture has not reduced the rum more than 25 per cent. under proof. A certificate declared the result of the analysis to be as follows: "I find that the sample contained an excess of water over and above what is allowed by Act of Parliament. I estimate the excess of water at 13 per cent. of the entire sample. I am of opinion that the sample is not a sample of genuine rum."

Held, that the certificate ought to have stated the proportion of water mixed with the rum, and

was insufficient, and a conviction could not be supported.

HARRISON v. RICHARDS (1881).

45 J. P. 552.

A magistrate cannot act on his own opinion, contrary to the analyst's certificate.

R. sold milk to H. which was stated to be purchased for analysis, and the milk was duly divided into parts as required by the statute, and on analysis the certificate of the analyst, after stating the constituents, said the milk was adulterated with 20 per cent. of water. R., being charged with selling adulterated milk, the analyst's certificate was given in evidence, and H. gave no evidence to contradict it; but the magistrate, thinking that the state of the milk might be explained by its standing several hours in a large can, and the best milk at the top ladled out before the purchase, dismissed the summons.

Held, the magistrate was wrong, and as there was no evidence to contradict the certificate of the analyst, he ought to have acted on it, and convicted R.

(But see *Shortt* v. *Robinson*, *post*, p. 71.)

FORTUNE v. HANSON (1896).

1 Q. B. 202.

Certificate of analysis: Sufficiency of.

In a prosecution under the Sale of Food and Drugs Act, 1875, for selling adulterated milk to a purchaser, the only evidence of adulteration was the certificate of the public analyst, which stated that the sample submitted to him "contained the percentage of foreign ingredients as under:—5 per cent. of added water."

Held, that the certificate was bad as evidence, under the Act, of adulteration, because it did not state the constituent parts of the sample analysed.

HEWITT v. TAYLOR (1896).

1 Q. B. 287.

Evidence—Certificate af analyst.

At the hearing of an information under the Sale of Food and Drugs Act, 1875, the production of the certificate of the analyst is not conclusive evidence if the defendant tenders himself as a witness and gives evidence on his own behalf.

BRIDGE v. HOWARD (1897).

1 Q. B. 80.

Certificate of analysis : Sufficiency of.

In a prosecution under the Sale of Food and Drugs Act, 1875, for selling adulterated milk the certificate of the public analyst stated that the sample submitted to him contained 6 per cent. of added water, and went on to say, "This opinion is based on the fact that the sample contained 7·97 per cent. solids not fat, whereas genuine milk contains not less than 8·5 per cent. solids not fat."

Held, that the certificate was good, although it did not state the constituent parts of the sample analysed.

Fortune v. *Hanson*, [1896] 1 Q. B. 202 explained.

H.

MISCELLANEOUS CASES.

KNIGHT v. BOWERS (1885).

14 Q. B. D. 845 ; 49 J. P. 614 ; 54 L. J. M. C. 108 ; 53 L. T. 234 ; 33 W. R. 613 ; 1 T. L. R. 390 ; 15 Cox C. C. 728.

Article sold totally different from that demanded.

The sale of Food and Drugs Act, 1875, after reciting that it is desirable to amend the law regarding the sale of food and drugs in a pure and genuine condition, provides by s. 6 that no person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser under a penalty.

A purchaser asks for saffron, but savin was supplied. The savin was in its natural condition, unadulterated, and not mixed or compounded with any other drug, article, or ingredient.

Held, that s. 6 was not limited in its application to sales of adulterated articles, but that it applied

also to cases in which the article sold was unadulterated, but wholly different from that demanded by the purchaser.

ROLFE (or ROLF) v. THOMPSON (1892).

2 Q. B. 196 ; 56 J. P. 425 ; 61 L. J. M. C. 184 ; 67 L. T. 295 ; 8 T. L. R. 644.

Entire sample need not be sent to analyst.

By s. 3 of the Sale of Food and Drugs Act Amendment Act, 1879 (42 & 43 Vict. c. 30), an inspector is enabled to procure "at the place of delivery any sample of any milk in the course of delivery" to the purchaser or consignee, and if he suspects the milk to have been sold contrary to the provisions of 38 & 39 Vict. c. 63, he "shall submit the same to be analysed." An inspector having taken a sample of milk under the section, divided it, retained one part, and submitted the other part to be analysed.

Held, that he was not bound to submit for analysis the whole sample taken by him.

KEARLEY v. TYLOR (or TONGE) (1891).

56 J. P. 72 ; 60 L. J. M. C. 159 ; 65 L. T. 261 ; 17 Cox C. C. 328.

Wrong label put on lard by mistake : Refusal of evidence of mistake.

E. W., in the employment of and at the request of respondent, entered a shop belonging to the appellants and asked for some lard. He was served with it by the shop assistant, and then handed it to respondent, who informed the shop assistant that it was bought for the purpose of analysis. The assistant then noticed that he had inclosed the lard in a wrapper labelled "margarine," and pointed out the mistake. A summons was taken out under s. 6 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), and on the hearing of the charge evidence was called and tendered on behalf of the appellants that in the hurry of the business, and by mistake, their assistant had put the lard in a wrapper marked "margarine," instead of "lard compound," and that such an act was contrary to the express instructions of the appellants. The justices refused to admit such evidence, and convicted and fined the appellants.

Held, that the conviction must be quashed, for the evidence tendered and refused was admissible and material.

LANE v. COLLINS (1884).

14 Q. B. D. 193 ; 49 J. P. 89 ; 54 L. J. M. C. 76 ; 52 L. T. 257 ; 33 W. R. 365 ; 15 Cox C. C. 677.

Skimmed milk sold as milk.

It was proved, on an information under s. 6 of the Sale of Food and Drugs Act, 1875, that the appellant, who was an inspector under the Act, on asking the respondent, a milk-seller, for "milk," was supplied by the respondent with milk which had been skimmed, and which was in consequence, as compared with normal milk as it comes from the cow, deficient in butter fat to an extent of 60 per cent.

Held, that on these facts it was not proved that any offence had been committed by the respondent against the provisions of s. 6 of the Sale of Food and Drugs Act, 1875.

KIRK v. COATES (1885).

16 Q. B. D. 49 ; 49 J. P. 740 ; 50 J. P. 148 ; 55 L. J. M. C. 182 ; 34 W. R. 295 ; 54 L. T. 178 ; 2 T. L. R. 83.

Skimmed milk : Representation as to quality of article sold.

C. was carrying a milk-can in a street in Huddersfield, which, on inquiry, he told K. contained

new milk, and there were other milk-cans in a cart driven by C., some of which he said contained old milk. K. pointed to the can said to contain new milk, and said, "Let me have a pint out of this can." C., after hesitating, said, "That can contains old milk," and then sold a pint of it, which, when examined, showed a result good enough for old milk, but not for new milk. The expression "old milk" is understood in the district to mean milk which has stood for 12 hours, and from which the cream has been removed. C. was summoned under 38 & 39 Vict. c. 63, s. 6.

Held, that the justices were right in dismissing the summons, as there had been no sale of new milk, but only of old milk.

JAMES v. JONES (1894).

1 Q. B. 304; 58 J. P. 230; 70 L. T. 351; 42 W. R. 400; 10 T. L. R. 208.

Baking powder not an article of food.

The appellant sold to the respondent a packet of baking powder composed of 20 per cent. of bicarbonate of soda, 40 per cent. of ground rice, and

40 per cent. of alum, the last of which ingredients is injurious to health.

Held, that such baking powder was not an article of food, and that the sale of it was not an offence within s. 3 of the Sale of Food and Drugs Act, 1875. (*See now Sale of Food and Drugs Act*, 1899, *s.* 26.)

SHORTT v. SMITH (1895).

59 J. P. 213.

Definition of food—Chewing gum.

The appellant demanded three sticks of chewing gum to be sold to him by the respondent. Each stick was labelled "Cloves, for chewing only, and not to be eaten." On analysis, the article was certified to contain 35 per cent. of paraffin wax. Another ingredient was gum mastic. The respondent was charged with an offence against s. 6 of the Sale of Food and Drugs Act, 1875. The justices held that chewing gum was not food within the meaning of the Act, and dismissed the information against the respondent.

Held, that the justices were right.

FOWLE v. FOWLE (1896).

60 J. P. 758.

Drug—Beeswax sold by a grocer.

A grocer sold to the appellant a quarter of a pound of beeswax, stating at the time that he could not guarantee it as pure. The beeswax was found on analysis to contain 50 parts of paraffin wax. The justices dismissed the information on the ground that beeswax was not a drug within the meaning of the Sale of Food and Drugs Act, 1875.

Held, that the justices were right, and that the sale of beeswax by a grocer under the circumstances of the case did not constitute the beeswax a drug within the definition given by the Act.

R. v. SMITH (1896).

1 Q. B. 596.

Magistrate—Jurisdiction—Place where offence committed—Analysis.

An information was preferred in the Clerkenwell Police Court by an inspector of nuisances for the district, charging the defendant with having, contrary to s. 27 of the Sale of Food and Drugs Act, 1875, given a false warranty in writing with respect to milk sold and delivered by him to a dairy

company. The sale, delivery, and giving of the warranty, had all taken place outside the limits of the jurisdiction of the Clerkenwell Police Court; but the inspector had, with a view to a prosecution against the dairy company, under s. 6, obtained a sample of the milk in the course of its delivery by them, within the jurisdiction of that court, to purchasers from them, and had submitted the sample to the public analyst of the district, who certified that it contained a percentage of added water.

Held, that a Metropolitan police magistrate sitting at the Clerkenwell Police Court had no jurisdiction under the Sale of Food and Drugs Act, 1875, to hear and determine the information against the defendant.

HOUGHTON v. TAPLIN (1897).

(Reported in "Times" Newspaper, May 8th.)

This was a case stated by justices of Richmond, upon dismissing a summons under the Sale of Food and Drugs Act, 1875.

An information was laid against the respondent charging him with selling, to the prejudice of the appellant, a drug, to wit, arsenical soap, which was not of the nature, substance, and quality of the article demanded, contrary to s. 6 of the Sale of Food and

Drugs Act. The appellant asked for arsenical soap, and he was supplied by the respondent with a tablet of Dr. Mackenzie's arsenical toilet soap. The soap contained no arsenic. The magistrates dismissed the information, holding that though arsenical soap was a drug within the meaning of the Act, yet as the soap in question contained no arsenic, it was not a drug and no offence had been committed.

The court dismissed the appeal. Mr. Justice HAWKINS on the ground that the soap was not a drug, and Mr. Justice WRIGHT on the ground that the soap was a compounded drug within the meaning of sub-s. (3).

SHORTT v. ROBINSON (1899).

63 J. P. 295.

Adulteration: Justices entitled to use facts within their own knowledge.

Upon the hearing of a charge of selling adulterated food, the justices are entitled to take into consideration facts within their own knowledge as to whether the food has been adulterated. (*See also R.* v. *Admiral Field and Others*, 11 T. L. R. 240.)

MARGARINE.

CRANE v. LAWRENCE (1890).

25 Q. B. D. 152 ; 54 J. P. 471 ; 59 L. J. M. C. 110 ; 63 L. T. 197 ; 38 W. R. 620 ; 6 T. L. R. 370.

Margarine : Exposed for sale.

By s. 6 of the Margarine Act, 1887, if margarine be "exposed for sale by retail," there shall be attached to each parcel thereof so exposed, and in such manner as to be clearly visible to the purchaser, a label marked "margarine," and by s. 4 penalties are imposed for offences against the Act.

The respondent kept margarine for sale in his shop, in a parcel which was not labelled, behind a screen, and not in sight of customers. There was no evidence that this was done for the purpose of evading the Act.

Held, that the margarine was not "exposed for sale" within the meaning of the Act, and the respondent was not liable to be convicted.

WHEAT v. BROWN (1892).

1 Q. B. 418; 56 J. P. 153; 61 L. J. M. C. 94; 66 L. T. 464; 40 W. R. 462; 8 T. L. R. 294.

Margarine: Exposure for sale.

By s. 6 of the Margarine Act, 1887, if margarine be "exposed for sale by retail," there shall be attached to each parcel thereof a label of the prescribed size and marked in the prescribed manner.

A dealer in margarine placed a number of parcels of margarine upon the counter of his shop. The parcels were in view of purchasers, but were wrapped in paper, so that they could not see the contents. The paper wrappers had the word "margarine" printed on them in letters a quarter of an inch square, but no label marked "margarine" in letters one inch and a half square was attached to any of the parcels in such a manner as to be visible to purchasers. The justices dismissed an information under the above section, on the ground that to constitute an offence the margarine itself must be exposed to the view of the purchaser.

Held, that the meaning of the words "exposed for sale" was not limited to such an exposure as would enable purchasers to see the margarine itself, but that margarine when wrapped in

paper so as to be invisible to the purchaser, might be exposed for sale within the meaning of the Act.

R. v. TITTERTON (1895).

2 Q. B. 61.

Application of penalties.

The application of penalties under the Margarine Act, 1887, is part of "the proceedings" within s. 12; and in the case of a prosecution by an inspector appointed by a local authority within the metropolitan police district, the penalties are payable to the inspector under the incorporated s. 20 of the Sale of Food and Drugs Act, 1875, and not to the Receiver of the Metropolitan Police, under s. 47 of the Metropolitan Police Courts Act, 1839.

MOORE v. PEARCE'S DINING AND REFRESHMENT ROOMS (1895).

2 Q. B. 657.

Exposed for sale.

The respondents were summoned for exposing margarine for sale by retail, without a label marked "margarine" attached to each parcel contrary to s. 6 of the Margarine Act, 1887. The respondents

kept a refreshment room, in which were posted notices that "Nothing but a mixture of the best Danish butter and margarine is sold at this establishment." Slices of bread, spread with a mixture of Danish butter and margarine, were sold for consumption on the premises, and also haddocks, on which was put margarine cut from a lump kept on a shelf. There were no labels either on the slices or on the lump of margarine.

Held, that the margarine had not been exposed for sale by retail, within the meaning of s. 6, and therefore, no offence had been committed.

WORLD'S TEA COMPANY v. GARDNER ; SAME v. SAME (1895).

59 J. P. 358.

Offering for sale : Other words besides "Margarine" printed on wrapper.

An offer to sell margarine under any other name is not an offence against the Margarine Act, 1887. An offering for sale contrary to the Act is not proved by proof of an offer to sell.

It is not necessary that the word "margarine" should be the only word printed on the wrapper required by the Act to be delivered to the purchaser on a sale of margarine by retail, so long as it is

printed thereon in capital letters of the required size.

If the word "margarine," although printed on the wrapper in capital letters of the required size, were so printed in relation to other words printed thereon as to convey the idea that it was not intended for the designation of the article sold therewith, whether that would be sufficient, *quære.* (*See now Sale of Food and Drugs Act,* 1899, *s.* 6.)

TOLER v. BISCHOP (1895).

59 J. P. 693.

Sale by retail—Wrapper.

The respondent was summoned for an offence against the Margarine Act, 1887, s. 6, for selling margarine by retail without delivering it in or with a paper wrapper having the word "margarine" on it in letters of the required size. The appellant, an officer of the Butter Association, went into the shop and asked for two pounds of Le Dansk. The respondent took two cardboard boxes marked "French Factory Le Dansk" from a cupboard, and wrapped them in brown paper and delivered them to the appellant. The boxes were themselves stamped with the word "margarine" in letters of the required size, but the brown paper was not so

stamped. It was not found whether the boxes were wrapped in the brown paper at the request of the appellant or not. The magistrate dismissed the summons, subject to this case, on the ground that no offence had been disclosed.

The court affirmed the decision of the magistrate but without costs, since it did not appear how the brown paper came to be put outside the boxes.

BUCKLER v. WILSON (1896).

1 Q. B. 83.

Sale contrary to Act — Delivery to purchaser in borough—Jurisdiction of county justices—Time for service of summons—Notification to seller—Condition precedent.

The appellant was convicted on the complaint of the guardians of a union, by the county justices, under the Margarine Act, 1887, for selling margarine otherwise than in a package marked "margarine," contrary to s. 6. The margarine was delivered to the purchaser in a borough which had not a separate court of quarter sessions.

Held, affirming the conviction, that the county justices had jurisdiction; that, the justices, having found that the article sold was not a

perishable article, s. 10 of the Sale of Food and Drugs Act Amendment Act, 1879, did not apply, and it was not necessary that the summons should be served within twenty-eight days from the time of the purchase; that, the margarine not having been purchased for test purposes, or with the intention of submitting it to analysis, it was not a condition precedent to the prosecution under the Margarine Act that the notification of intention to have it analysed, prescribed by s. 14 of the Sale of Food and Drugs Act, 1873, should have been given to the appellant.

Parsons v. *Birmingham Dairy Co.*, 9 Q. B. D. 172, disapproved; *Guardians of Enniskillen* v. *Hilliard*, 14 L. R. Ir. 214, approved.

INDEX.

A.

B.

C.

D.

E.

F.

M.

N.

O.

P.

Q.

R.

S.

T.

V.

W.

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